Memorandum

Date:

April 13, 2010

To:

Office of the Commissioner

Attention: Commissioner J. A. Farrow

From:

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

Office of the Assistant Commissioner, Inspector General

File No.:

005.9968.A13471.010

Subject:

FINAL 2009 COMMAND AUDIT REPORT OF CAPISTRANO AREA

In accordance with the Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing* §2440, issued by the Institute of Internal Auditors, Government Code §13887(a)(2), and the California Highway Patrol Audit Charter, I am issuing the 2009 Command Audit Report of the Capistrano Area. The audit focused on the command's Driving Under the Influence and Asset Forfeiture Programs.

The audit revealed the command has adequate operations. However, some issues were observed. This report presents suggestions for management to improve on some of its operations. In doing so, operations would be strengthened and the command would ensure it is operating in compliance with policies and procedures. We have included our specific findings, recommendations, and other pertinent information in the report. The Capistrano Area agreed with all of the findings and plans to take corrective action to improve its operations.

Capistrano Area will be required to provide a 30 day, 60 day, six month, and one year response on its corrective action plan implementation. If identified issues are resolved and addressed during any phase of the above reporting period, no future action is required on their behalf. Also, the Office of Inspections plans on conducting a follow-up review within one year from the date of the final report.

Additionally, in accordance with the *International Standards for the Professional Practice* of *Internal Auditing* and Government Code §13887(a)(2), this report, the response, and any follow-up documentation is intended for the Office of the Commissioner; Office of the Assistant Commissioner, Field; Office of the Assistant Commissioner, Inspector General; Office of Legal Affairs; Office of Inspections; Border Division; and the Capistrano Area. Please note this report restriction is not meant to limit distribution of the report, which is a matter of public record pursuant to Government Code §6250 et seq.

Office of the Commissioner Page 2 April 13, 2010

Furthermore, in accordance with the Governor's Executive Order S-20-09 to increase government transparency, the final audit report, including the response to the draft audit report, will be posted on the CHP's internet website, and on the Office of the Governor's webpage, located on the State's Government website.

The Office of Inspections would like to thank Capistrano Area's management and staff for their cooperation during the audit. If you need further information, please contact Captain Ernie Sanchez at (916) 843-3160.

M. C. A. SANTIAGO, CIG, CLEA

Assistant Commissioner

cc: Office of the Assistant Commissioner, Field

Border Division Capistrano Area

Office of Legal Affairs

Office of Inspections, Audits Unit

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

COMMAND AUDIT OF CAPISTRANO AREA



FINAL REPORT

APRIL 13, 2010

BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

COMMAND AUDIT OF CAPISTRANO AREA

OFFICE OF INSPECTIONS, AUDITS UNIT APRIL 13, 2010

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Executive Summary

The Commissioner has the responsibility, by statute, to enforce laws regulating the operation of vehicles and use of highways in the State of California and to provide the highest level of safety, service, and security to the people of California. Consistent with the California Highway Patrol's (CHP) 2009 Audit Plan, the Office of the Commissioner directed the Office of Inspections, Audits Unit, to perform an audit of the Capistrano Area command.

The CHP's 2008-2010 Strategic Plan highlights the mission statement which includes five broad strategic goals designed to guide the CHP's direction. One strategic goal is to continuously look for ways to improve the efficiency and/or effectiveness of departmental operations.

The objective of the audit is to determine if the command has complied with operational policies and procedures regarding the Driving Under the Influence (DUI) Cost Recovery and Asset Forfeiture Programs. Additionally, this audit will provide managers with reasonable, but not absolute, assurance that departmental operations are being properly executed. The audit period was from January 1, 2008 through February 28, 2009. However, to provide a current evaluation of the command, primary testing was performed of business conducted during the period of July 1, 2008 through November 30, 2008. The audit included a review of existing policies and procedures, as well as, examining and testing of recorded transactions, to determine compliance with established policies, procedures, and good business practices. The audit field work was conducted from March 9-13, 2009.

Sample selection for this audit was primarily random. However, if a judgmental sample was necessary, the auditor selected accordingly. Whenever possible, the use of risk assessment was used to select a sample containing the highest probability of risk to the command.

Based on the review of the Capistrano Area's operations, this audit revealed the Capistrano Area has complied with most operational policies. However, some issues were observed. The following is a summary of the identified issues:

DUI Cost Recovery Program

- The command did not always maintain proper and accurate DUI Cost Recovery Program documents.
- The command did not always forward their Incident Response Reimbursement Statements to the Fiscal Management Section (FMS) in a timely manner.
- The command did not reconcile the quarterly DUI Cost Recovery report received from FMS to its CHP 735A, DUI Case Log.

Asset Forfeiture (AF) Program

- The command did not appoint a uniformed supervisor as the command's AF Coordinator.
- The command did not perform annual AF training.

Please refer to the Findings and Recommendations section for detailed information.

AUDIT REPORT

INTRODUCTION

To ensure the California Highway Patrol's (CHP) operation is efficient and/or effective and internal controls are in place and operational, the Office of the Commissioner directed the Office of Inspections, Audits Unit, to perform an audit of the Capistrano Area.

The CHP's 2008-2010 Strategic Plan highlights the mission statement which includes five broad strategic goals designed to guide the CHP's direction. One strategic goal is to continuously look for ways to increase the efficiency and/or effectiveness of departmental operations. This audit will assist the CHP in meeting its goal.

OBJECTIVE AND SCOPE

The objective of the audit is to determine if the command has complied with operational policies and procedures regarding the Driving Under the Influence (DUI) Cost Recovery and Asset Forfeiture (AF) Programs that provide managers with reasonable, but not absolute, assurance departmental operations are being properly executed. The audit period was January 1, 2008 through February 28, 2009. However, to provide a current evaluation of the command, primary testing was performed of business conducted during the period July 1, 2008 through November 30, 2008. This audit included the review of existing policies and procedures, as well as examining and testing recorded transactions, to determine compliance with established policies, procedures, and good business practices. The audit field work was conducted from March 9-13, 2009.

METHODOLOGY

Under the direction by the Office of the Commissioner, each command was randomly selected to be audited regarding its DUI Cost Recovery and Asset Forfeiture Programs. Sample selection of areas to be audited was primarily random or judgmental. Whenever possible, the use of risk assessment was used to select a sample containing the highest probability of risk to the command.

There were not prior audit reports and findings.

OVERVIEW

DUI Cost Recovery Program: The command was compliant with most state laws and departmental policies and has adequate controls regarding the DUI Cost Recovery Program. However, the command did not always maintain proper and accurate DUI Cost Recovery Program documents; did not always forward its Incident Response Reimbursement Statements to

the Fiscal Management Section (FMS) in a timely manner; and did not reconcile the quarterly DUI Cost Recovery report received from FMS to its CHP735A, DUI Case Log.

Asset Forfeiture: The command was compliant with most state laws and departmental policies and has adequate controls regarding the AF Program. However, the command did not appoint a uniformed supervisor as the command's AF Coordinator and did not perform annual AF training.

This audit revealed the command has adequate operations, nevertheless, issues were discovered, which if left unchecked could have a future negative impact on the command and CHP operations. These issues should be addressed by management to maintain the command's compliance with appropriate laws, regulations, policies, and procedures. The findings and appropriate recommendations are presented in this report.

As a result of changing conditions and the degree of compliance with policies and procedures, the efficiency and effectiveness of operations change over time. Specific limitations may hinder the efficiency and effectiveness of an otherwise adequate operation include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, fraud, and management overrides. Establishing compliant and safe operations and sound internal controls would prevent or reduce these limitations; moreover, an audit may not always detect these limitations.

DRIVING UNDER THE INFLUENCE (DUI) COST RECOVERY PROGRAM

FINDING 1:

The command did not always maintain proper and accurate DUI Cost Recovery Program documents.

Condition:

From a population of 57 CHP 157, Incident Response Reimbursement Statement billing packages, 13 billing packages were tested. Testing revealed the following issues:

- a. Thirteen (100 percent) CHP 415 Daily Field Records did not record the defendant's name.
- b. Twelve (92 percent) of the CHP 735s were not completely or accurately recorded, [e.g., wrong hourly rate, inaccurate Blood Alcohol Concentration (BAC) result date or date sent to Fiscal Management Section (FMS)].
- c. Four (31 percent) DUI cases listed on FMS' Quarterly Report of DUI submissions were not recorded on the command's Log CHP 735A, DUI Cost Recovery Program.
- d. For the period of July 2008 through February 2009, the CHP 735A did not list the date the case was sent to FMS.

Criteria:

Highway Patrol Manual (HPM) 11.1, Administrative Procedures Manual, Chapter 20, Driving Under the Influence (DUI) Cost Recovery Program, paragraph 4(b), 4(c), and 4(i) states:

- "b. Completion of CHP 735, Incident Response Reimbursement Statement. The cost recovery criterion is separated into two separate sections on the CHP 735, Incident Response Reimbursement Statement: Section A or Section B. Section A shall be completed when the billing is based on arrest. Section B shall be completed when the billing is based on conviction. Forward only those forms which meet ALL the criteria in either Section A or Section B; only one section shall be completed per case.
 - (1) Completed CHP 735s, Incident Response Reimbursement Statements, based on Section A (refer to Annex B) shall be forwarded to Fiscal Management Section (FMS), Reimbursable Services Unit, within ten business days of <u>one of the following dates</u>:
 - (a) The date BAC results of .08% or greater are received.

- (b) The date BAC results of .04% or greater are received for commercial drivers.
- (2) Completed CHP 735s, Incident Response Reimbursement Statements, based on Section B (refer to Annex C) shall be forwarded to FMS, Reimbursable Services Unit, within ten business days of the notification of a conviction of CVC Sections 23152, 23153, or greater offense as a result of one of the following:
 - (a) In the case of a refusal.
 - (b) An arrest for drugs only.
 - (c) A BAC of less than .08%.
- c. <u>Defendant</u>. Include the offender's name and address, date of birth, arrest date, social security number (if available), and driver's license number.

NOTE: If the defendant is a transient, log on the CHP 735A, Case Log - DUI Cost Recovery Program (refer to Annex D), but <u>DO NOT</u> forward CHP 735, Incident Response Reimbursement Statement, to FMS."

- "i. <u>Total Costs</u>. FormFlow will multiply the number of response hours and minutes times the current hourly rate and enter the amount in the appropriate box. The hourly rates are sent out to all Area offices via Comm-Net from FMS."
- HPM 11.1, Administrative Procedures Manual, Chapter 20, Driving Under the Influence (DUI) Cost Recovery Program, paragraph 5(a) states:
- "a. <u>Log Procedures</u>. CHP 735A, Case Log DUI Cost Recovery Program, is available to assist Area offices in tracking cases (refer to Annex D). The use of this form is optional. Area offices using this form, or any other case monitoring system (i.e., logging method), shall include the following information:
 - (1) <u>Defendant Information</u>. Defendant's full name and street address.
 - (2) <u>Violation Information</u>. Incident date and CVC Section violated (e.g., 23152, 23153, or greater offense involving alcohol).
 - (3) <u>Court Information</u>. Court name, case number, and conviction date (if applicable).
 - (4) <u>Fiscal Management Section Information</u>. Date the CHP 735, Incident Response Reimbursement Statement, was forwarded to FMS.
 - (5) <u>Blood Alcohol Concentration Test Results</u>. Results of the supporting BAC test."

Recommendation:

The command should maintain proper and accurate DUI Cost Recovery Program documents according to policy.

FINDING 2

The command did not always forward the CHP 735s to FMS in a timely manner.

Condition:

From a population of 57 CHP 735 billing packages, 13 CHP 735 billing packages were tested. Testing revealed seven (54 percent) CHP 735s were not forwarded to FMS within ten business days after BAC results were received, as required by the departmental policies.

Criteria:

HPM 11.1, Administrative Procedures Manual, Chapter 20, Driving Under the Influences (DUI) Cost Recovery Program, paragraph 4.b.(1) and (2) states,

- "(1) Completed CHP 735s, Incident Response Reimbursement Statements, based on Section A (refer to Annex B) shall be forwarded to Fiscal Management Section (FMS), Reimbursable Services Unit, within ten business days of one of the following dates:
 - (a) The date BAC results of .08% or greater are received.
 - (b) The date BAC results of .04% or greater are received for a commercial driver.
- (2) Completed CHP 735s, Incident Response Reimbursement Statements, based on Section B (refer to Annex C) shall be forwarded to FMS, Reimbursable Services Unit, within ten business days of the notification of a conviction of CVC Sections 23152, 23153, or greater offense as a result of one of the following:
 - (a) In the case of a refusal.
 - (b) An arrest for drugs only.
 - (c) A BAC of less than .08%."

Recommendation:

The command should comply with departmental policy by ensuring their timely submission of DUI Cost Recovery Program billing packages to FMS.

FINDING 3:

The command did not reconcile the quarterly DUI Cost Recovery reports received from FMS to its CHP 735A, DUI Case Log.

Condition:

The command did not reconcile the FMS quarterly reports for the third and fourth quarters of 2008 to its DUI Case Log to ensure its CHP 735s were received by FMS.

- 1. Seven cases that occurred in the third quarter of 2008 were listed on the command's CHP 735A but were not reflected on FMS' third or fourth quarter reports. The command did not follow-up on these billing packages to ensure they were received by FMS.
- 2. Four DUI cases shown on FMS' quarterly reports did not appear on the command's CHP 735A.

Criteria:

Government Code Section 13403(a)(3), (4), and (6) says the elements of a satisfactory system of internal accounting and administrative control, shall include, but are not limited to, the following: A system of authorization and recordkeeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures; an established system of practices to be followed in performance of duties and functions in each of the state agencies; and an effective system of internal review.

HPM 11.1, Administrative Procedures Manual, Chapter 20, DUI Cost Recovery Program, paragraph 8 states:

"8. QUARTERLY REPORTS. Fiscal Management Section will send quarterly reports to field commands. These reports are designed to assist in the monitoring and timely submission of the command's CHP 735, Incident Response Reimbursement Statement, forms. The report notes the date of arrest or conviction, the date the CHP 735, Incident Response Reimbursement Statement, was received in FMS and the billed date. It also provides the number of days between the arrest or conviction date and date the CHP 735, Incident Response Reimbursement Statement, was received in FMS. Field commands are responsible for ensuring the CHP 735, Incident Response Reimbursement Statement, is submitted in accordance with paragraphs 3 and 4 of this chapter."

Recommendation:

The command should comply with departmental policy by reconciling the quarterly DUI Cost Recovery report received from FMS to its CHP 735A.

ASSET FORFEITURE (AF) PROGRAM

FINDING 1:

The command did not appoint a uniformed supervisor as the command's Area Asset Forfeiture Coordinator (AFC).

Condition:

An officer served as the Capistrano Area's AFC. Upon being notified of this issue, the command immediately took corrective action and appointed a uniformed supervisor as AFC.

Criteria:

HPM 81.5, Drug Programs Manual, Chapter 2, Asset Forfeiture Program, paragraph 9.a. states:

"a. The Area AFC is the Area level liaison for the AFP. Area AFCs shall be uniformed supervisors and should be available during normal business

hours. At the commander's discretion, Area AFCs may delegate tasks to an officer; however, the appointed uniformed supervisor is ultimately responsible for ensuring the duties of the Area AFC are accomplished."

Recommendation:

The command should comply with the departmental policy by appointing a uniformed supervisor as the Area AFC.

FINDING 2:

The command did not perform annual AF training.

Condition:

The Command did not perform annual AF training for supervisors, officers, and affected non-uniformed personnel at least once a year.

Criteria

Health and Safety Code Section 11469 states, "Seizing agencies shall implement training for officers assigned to forfeiture programs, which training should be ongoing."

HPM 81.5, Drug Programs Manual, Chapter 2, Asset Forfeiture Program, paragraph 21, states,

"21. ASSET FORFEITURE TRAINING.

- a. In order to ensure uniformity throughout the Department, Division AFCs shall receive annual training from the departmental AFC coordinator in FSS. The training will encompass asset forfeiture laws, pending state and/or federal legislation relating to asset forfeiture, departmental policies, and procedures. Division AFCs will in turn provide annual training to Area AFCs, uniformed employees assigned to NTFs, canine handlers, and affected non-uniformed employees involved with asset forfeiture. The training shall be of sufficient duration to ensure full understanding of legal/policy requirements. In addition, Division AFCs should attend Division Area Commanders' Conferences as necessary to provide commanders with an overview of the Department's AFP and any related new legislation or updates to departmental policy.
- b. Area AFCs shall provide training for Area supervisors, officers, and affected non-uniformed personnel at least once a year. Area AFCs shall ensure officers are made aware of local MOUs with allied agencies/NTFs regarding turnover of arrests for controlled substance violations and are familiar with the legal requirements and departmental policies/procedures related to the seizure of assets.
- c. Area and Division commanders shall ensure that AFCs and their alternates attend all locally required training in asset forfeiture procedures when such training is provided by the district attorney's office. In addition, the California District Attorneys' Association sponsors asset forfeiture classes each year. Class information is available through the Internet on the California District Attorneys' Association web site (www.CDAA.org), or by calling the California District Attorneys' Association in Sacramento at (916) 443-2017. Commanders are

encouraged to include these classes in their annual Departmental Out-Service Training plans. The following procedures shall be followed when requesting to attend out-service asset forfeiture training."

Recommendation:

The command should comply with the departmental policy regarding the performance of annual asset forfeiture training.

Conclusion

Based on the review of the command's operation, this audit revealed the command has adequate operations. However, some issues were observed. This report presents suggestions for management to improve on some of its operations. In doing so, operations would be strengthened and the command would operate in accordance with departmental policies and procedures.

ANNEX A

Memorandum

Date:

February 16, 2010

To:

Office of Inspections

From:

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

Border Division

File No.:

601.9857.10554

Subject:

CAPISTRANO AREA'S RESPONSE TO 2009 COMMAND AUDIT – DUI

COST RECOVERY & ASSET FORFEITURE

Attached is Capistrano Area's response to the 2009 Command Audit – DUI Cost Recovery & Asset Forfeiture Inspection recently conducted by personnel from your office.

The Area commander has closely reviewed the findings and recommendations contained within the final report and concurs with the evaluator's findings. Command will address the following findings:

Finding #2, Area will insure the court officer maintains an accurate suspense file.

Finding #3, Area will ensure the court officer receives all reports in a timely manner to prevent delays in reporting information as required. As such, the commander has taken the necessary steps to implement the recommended procedures.

I concur with the commander's actions in this matter and am satisfied identified deficiencies are being properly addressed and will reassess on a quarterly basis.

G. A. DOMINGUEZ, Chief

Attachment

cc: Capistrano Area

ECEIVE MAR 19 2010

ву:_______

ANNEX B

Memorandum

Date:

January 22, 2010

To:

Border Division

From:

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

Capistrano Area

File No.:

690.11756.11027

Subject:

2009 COMMAND AUDIT -- DUI COST RECOVERY & ASSET FORFEITURE

As requested the Capistrano Area has reviewed the Office of Inspections, Command Audit Report for the Area's DUI Cost Recovery and Asset Forfeiture Programs, outlining the inspector's findings.

As such, the Capistrano Area is submitting this memorandum to provide a written response for each item identified in the audit report's "Findings" section, and requiring follow-up and/or corrective action plan:

DUI Cost Recovery Program

Finding #1 – The Command did not always maintain proper and accurate DUI Cost Recovery program documents.

- a) Thirteen Daily Field Records (CHP 415) did not record the defendant's name.
- b) Twelve of the CHP 735's were not completely or accurately recorded.
- c) Four DUI cases listed on Fiscal Management Section's (FMS) Quarterly Report of DUI submissions were not recorded on the command's DUI Cost Recovery Log (CHP 735A).

Response – Agree with findings. The DUI Cost Recovery program was reassigned to the Court Officer for all processing, reconciling, and logging of reports. The Area provided training and detailed guides to all uniformed officers and supervisors for the proper steps in documenting all required forms (e.g., CHP 735, CHP 415, CHP 202, CHP 555/556) associated with the DUI Cost Recovery program. The Area also implemented a three step review process to reconcile all CHP 735 forms, to ensure report completeness and accurate recording.

Finding #2 – The Command did not always forward the CHP 735's to FMS within ten business days after the Blood Alcohol Concentration (BAC) results were received.

Response – Agree with findings. This issue was discussed with the Court Officer to maintain an accurate suspense file. All field personnel were instructed to document all BAC results obtained directly with breath testing equipment or in conjunction with a secondary chemical test method.

Note: Not all delays for processing of reports can be avoided, due to personnel work schedules (i.e. collateral duties, days off, mandated training, sick leave, etc.), Crime Lab analysis and/or reporting delays, completion of complex investigations.

Finding #3 – The Command did not reconcile the quarterly DUI Cost Recovery reports received from FMS to its DUI Case Log (CHP 735A).

Response – Agree with findings. This issue was addressed with the Court Officer, Office Services Supervisor (OSSI) and Administrative Sergeant. In the future, all reports and information received by the OSSI will be provided to the Court Officer and Administrative Sergeant. The Court Officer will be responsible for reconciling the reports and the Administrative Sergeant will conduct a second review, with final reporting to the Administrative Lieutenant.

Note: Not all delays for processing of reports can be avoided, due to FMS failing to provide their reports in a timely manner. Refer to the attached FMS email response dated 01/25/2010, explaining their reasons for delay.

Asset Forfeiture (AF) Program

Finding #1 – The Command did not appoint a uniformed supervisor as the Command's Asset Forfeiture Coordinator (AFC).

Response – Agree with findings. This issue was immediately addressed and corrected, with Sergeant S. Doumas, #11027, being assigned as AFC.

Finding #2 – The Command did not perform annual AF training for supervisors, officers and affected non-uniformed personnel at least once a year.

Response – Agree with findings. This issue was addressed with Headquarters and Division AF Training coordinators, prior to the OISP audit. The email correspondence advising our staffs request for training and being told no training dates were scheduled was provided to the OISP Inspector at the time of the audit. The correspondence reflected the efforts made by our AFC in attempting to secure the required training. The AF training for the 2009 year was recently provided on November 19, 2009, and all required Area personnel attended.

Note: Mandated and/or required annual AF training is coordinated by Headquarters and Division AFC's. As such, the Area Command does not have direct control in managing or providing the training courses to their personnel.

Upon receipt of the final report, Area will provide the required 30 day, 60 day, six month, and one year response on our corrective action plan implementation until all issues are resolved.

If you should have any further questions please contact Sergeant S. Doumas, #11027, at the Area office phone number of (949) 487-4000.

S. HOUSPON, Captain

Commander Capistrano Area

attachment(s)

From:

Lisa Riley

To:

Speros Doumas

CC:

Joan Rivas; Sarah Magliaro

Date:

1/25/2010 9:58 AM

Subject:

Re: 735 End of Year Reconciliation

Hi Speros:

I just spoke to Ann, in the Administrative Services Unit DUI Cost Recovery Program (916.843.3570), and she said they are incredibly backlogged and have no idea when they will be able to get 3rd and 4th quarterly reports to us. (She said they are down 6 vacant positions and they do not know when they will be filled.) They will forward to us, when they are able to catch up and complete their reports.

Sincerely,

Lisa

>>> Speros Doumas 1/25/2010 8:50 AM >>> Good Morning Ladies,

This is a suspense item relative to our required 735 audit action items. Please make sure we obtain the remaining quarterly DUI Cost Recovery / 735 report from Admin. Services Division, so we can reconcile the reports and make necessary updates if needed.

The two reports I received were for the 1st and 2nd quarters, so we need to obtain the 3rd and 4th quarters to close out the year. Upon completion of reconciliation please route data/memo to me for further processing.

Thanks!

Speros